IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

MFA.No. 612 of 1998()

WCC.222/1995 of W.C.C.,KOZHIKODE
.....

APPELLANT - 2ND OPPOSITE PARTY:

THE NEW INDIA ASSURANCE CO. LTD.,
KOZHIKODE NOW REPRESENTED BY ITS
DEPUTY MANAGER, REGIONAL OFFICE,
M.G. ROAD, KOCHI - 682 011.

BY ADV. SRI.MATHEWS JACOB

RESPONDENT - APPELLANT:

VINJU, S/O. CHOYIKUTTY, EYYADI PARAMBA,
KUNNAMANGALAM (PO), KOZHIKODE.

BY ADV. SRI.CYRIAC THOMAS

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 07/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 612 OF 1998

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Dated this the 7th day of March, 2007

J U D G M E N T

The insurer in W.C.C. No.222 of 1995 on the file of the Commissioner or Workmen's Compensation Court, Kozhikode is the appellant. Respondent was a driver of an Autorikshaw bearing Reg. No.KL-11/B-3452 insured with the appellant company. The vehicle met with an accident on 18.3.1995. Respondent filed W.C.C. No.222 of 1995 claiming a compensation of Rs.1,00,000/-. By the time the case came up for evidence Sections 4 and 4A of the Workmen's Compensation Act were amended. The average wages of a workman, originally fixed at Rs.1,000/- was enhanced to Rs.2,000/-. The Workmen's Commissioner took the view that the evidence adduced is after the amendment which came into force from 15.9.1995 and the compensation due to the respondent has to be calculated according to the amended provisions. Accordingly he took Rs.2,000/- as the salary of the respondent and calculated the

compensation. For doing so, the Commissioner relied on the decision of the Apex Court in Civil Appeal Nos.21637 to 21642 dated 6.11.1996.

2. A Full Bench of this Court in **United India Insurance Co. Ltd. v. Alavi** (1998 (1) KLT 951 (F.B.) has held that Sections 4 and 4A of the Act has no retrospective operation and operates only prospectively. So the average income of the respondent is to be fixed as Rs.1,000/-. If Rs.1,000/- is taken as the average wages the amount due to the respondent is as follows:

$$\text{"}\frac{1000 \times 50 \times 20 \times 213.57}{100 \times 100}\text{"} = 21{,}357$$

Going by the decision of this Court stated supra the compensation awarded by the Commissioner is excessive and it has to be modified.

In the result, the appeal is allowed in part. The compensation awarded by the Workmen's Commissioner is

modified and reduced to Rs.21,357/- with 6% interest from the date of accident. Appellant is given two months' time from today to deposit the amount, failing which respondent can proceed for recovery of the amount. If the appellant had deposited any amount, the same shall be given credit to.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 612 OF 1998

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J U D G M E N T

7TH MARCH, 2007